



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2014

Ms. D. Armstrong
Administrative Assistant
Criminal Division
Hood County Sheriff's Office
400 Deputy Larry Miller Drive
Granbury, Texas 76048

OR2014-23295

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 547769.

The Hood County Sheriff's Office (the "sheriff's office") received a request for information pertaining to three specified incidents. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information was all responsive to a previous request for information, in response to which this office issued Open Records Letter No. 2013-09400 (2013). In that ruling, we determined that, with the exception of basic information, the sheriff's office may withhold certain reports, including incident number S1212499, under section 552.108(a)(1) of the Government Code, as they pertained to a pending criminal prosecution, and must release the remaining information. However, we understand the criminal prosecution related to incident number S1212499 has concluded, and is now pending appeal. Therefore, because the circumstances have changed, the sheriff's office may not rely on Open Records Letter No. 2013-09400 as a previous determination and may not withhold the information relating to incident number S1212499 based on that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where

requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Further, we note the sheriff's office did not previously seek to withhold incident numbers S1208453 and S1208556. Accordingly, the sheriff's office was required to release this information in response to the prior request. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, then the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, the sheriff's office may not now withhold incident numbers S1208453 and S1208556 unless release of this information is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the sheriff's office may not now withhold incident numbers S1208453 and S1208556 under section 552.108 of the Government Code. However, we will consider your argument under section 552.108 for incident number S1212499 and whether incident numbers S1208453 and S1208556 are otherwise excepted under the Act.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the Hood County District Attorney's Office advises release of the information relating to incident number S1212499 would interfere with an ongoing criminal appeal. Based on your representations and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold the information relating to incident number S1212499 under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the sheriff's office may withhold the information relating to incident number S1212499 under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

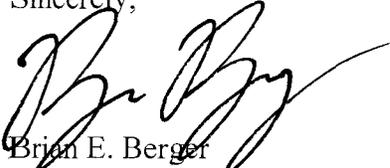
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 547769

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the sheriff's office receives another request for this same information from a different requestor, the sheriff's office must again seek a ruling from this office.